

§ 199.233

the operator's administration of any post-accident alcohol tests administered following the accident under investigation.

(f) An operator shall make records available to a subsequent employer upon receipt of the written request from the covered employee. Disclosure by the subsequent employer is permitted only as expressly authorized by the terms of the employee's written request.

(g) An operator may disclose information required to be maintained under this subpart pertaining to a covered employee to the employee or the decisionmaker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual, and arising from the results of an alcohol test administered under this subpart, or from the operator's determination that the covered employee engaged in conduct prohibited by §§199.215 through 199.223 (including, but not limited to, a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the employee).

(h) An operator shall release information regarding a covered employee's records as directed by the specific, written consent of the employee authorizing release of the information to an identified person. Release of such information by the person receiving the information is permitted only in accordance with the terms of the employee's consent.

§ 199.233 Removal from covered function.

Except as provided in §§199.239 through 199.243, no operator shall permit any covered employee to perform covered functions if the employee has engaged in conduct prohibited by §§199.215 through 199.223 or an alcohol misuse rule of another DOT agency.

§ 199.235 Required evaluation and testing.

No operator shall permit a covered employee who has engaged in conduct prohibited by §§199.215 through 199.223 to perform covered functions unless the employee has met the requirements of § 199.243.

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§ 199.237 Other alcohol-related conduct.

(a) No operator shall permit a covered employee tested under the provisions of § 199.225, who is found to have an alcohol concentration of 0.02 or greater but less than 0.04, to perform or continue to perform covered functions, until:

(1) The employee's alcohol concentration measures less than 0.02 in accordance with a test administered under § 199.225(e); or

(2) The start of the employee's next regularly scheduled duty period, but not less than eight hours following administration of the test.

(b) Except as provided in paragraph (a) of this section, no operator shall take any action under this subpart against an employee based solely on test results showing an alcohol concentration less than 0.04. This does not prohibit an operator with authority independent of this subpart from taking any action otherwise consistent with law.

§ 199.239 Operator obligation to promulgate a policy on the misuse of alcohol.

(a) *General requirements.* Each operator shall provide educational materials that explain these alcohol misuse requirements and the operator's policies and procedures with respect to meeting those requirements.

(1) The operator shall ensure that a copy of these materials is distributed to each covered employee prior to start of alcohol testing under this subpart, and to each person subsequently hired for or transferred to a covered position.

(2) Each operator shall provide written notice to representatives of employee organizations of the availability of this information.

(b) *Required content.* The materials to be made available to covered employees shall include detailed discussion of at least the following:

(1) The identity of the person designated by the operator to answer covered employee questions about the materials.

(2) The categories of employees who are subject to the provisions of this subpart.